IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-11-2007

CORAM :

THE HONOURABLE MR. JUSTICE A.KULASEKARAN

C.R.P. (PD) No. 1654 of 2006
and
M.P. No. 1 of 2006

S. Thirugnanasambandam .. Petitioner

Versus

Kaliyaperumal Chettiar .. Respondent

Revision under Article 227 of the Constitution of India against the Order dated 14.09.2006 made in I.A. No. 119 of 2006 in O.S. No. 2 of 2005 on the file of the Principal Sub Court, Cuddalore.

For Petitioner : Mr. K. Kannan
for Mr. R. Sunilkumar

For Respondent : Mr. K.A. Ravindran

ORDER

The defendant in O.S. No. 2 of 2005 on the file of the Principal Subordinate Judge, Cuddalore is the revision petitioner herein. The said suit was filed by the respondent herein for specific performance based on the agreement for sale dated 19.09.1992. In the said suit, the plaintiff/ respondent herein was examined in part. At this stage, the petitioner has filed I.A. No. 119 of 2006 under Order 8 Rule 6-A CPC seeking leave of the Court to file counter-claim, which was dismissed by the trial court on 14.09.2006. Challenging the said order dated 14.09.2006, the present revision petition has been filed.

2. Mr. Kannan, learned counsel appearing for the petitioner submitted that the petitioner in his written statement has taken a plea that the agreement of sale dated 19.09.1992 is fabricated one; the respondent took possession of the suit property from the petitioner's tenants unlawfully; that the respondent herein has filed O.S. No. 372 of 2002 on the file of the Additional District Munsif Court, Cuddalore for bare injunction in respect of the very same property; that in the said suit, a handwriting expert was appointed, who filed his report to the effect that the sale agreement dated 19.09.1992 was forged; that the respondent herein abandoned the suit without prosecuting it in order to avoid adverse finding from the Court and thereafter he filed the present suit in O.S. No. 2 of 2005; that in the event of dismissal of the present suit, the possession of the respondent herein would be declared

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

as unlawful, hence, the petitioner was constrained to file a counter-claim otherwise he has to file a separate suit for recovery of possession, that too after indefinite period only when the suit is disposed of ultimately; that the petitioner is a senior citizen; that in the interest of both the parties, the permission sought for by the petitioner to file a counter-claim ought to have been allowed by the trial court, but it failed and prayed for setting aside the same by allowing of the revision petition.

3. Mr. Ravindran, learned counsel appearing for the respondent submitted that if the permission sought at this distant point of time is allowed, it would definitely prolong the trial, complicate the smooth flow of proceedings and cause delay in progress of the suit. In any event, after examination of PW1 in part, the petitioner has applied for leave to file the counter-claim, hence, the court below has rightly rejected the application seeking leave to file the counter claim and prayed for dismissal of the revision petition.

4. This Court carefully considered the argument of counsel for both sides and perused the records. The new Rules 6A to 6G of Order VIII CPC were inserted making statutory provisions for admissibility of counter-claim to enable the defendant to enforce an independent right even unconnected with the claim made in the plaint. As per Section 6A of Order 8 CPC, the counter-claim has to be treated as a plaint and is governed by rules applicable to the plaints. A counter-claim has to be filed within the limitation period and the counter-claim survives despite dismissal of the suit filed by the plaintiff on account of withdrawal or even on merits. The object of the provisions for setting off counter-claim before filing of written statement is disposal of the suit cannot be delayed.

5. No doubt the object behind providing that a counter-claim must be made at the time of filing written statement or before time limited for submission of written statement has expired is, in case counter-claim is not filed simultaneously with the filing of the written statement, however, the court can allow an amendment so as to permit the defendant to make the counter-claim provided the relief do not exceed the pecuniary limits of the jurisdiction of the Court. In this case, the bar of limitation and exceeding the pecuniary jurisdiction of the court if counter claim is allowed are not canvassed by the respondent.

6. The Honourable Supreme Court in the decision reported in (Ramesh Chand Ardawatiya vs. Anil Panjwani) 2003 (3) MLJ 26 (SC) held that there are three modes of pleading or setting up a counter claim in a civil suit. Firstly, the written statement filed under Rule 1 may itself contain a counter-claim which in the light of Rule 1 read with Rule 6-A would be a counter claim against the claim of the plaintiff preferred in exercise of legal right conferred by Rule 6-A. Secondly, a counter claim may be preferred by way of amendment incorporated subject to the leave of the Court in a written statement already filed. Thirdly, a counter-claim may be filed by way of a subsequent pleading under Rule 9. In the latter two cases the counter-claim though referable to Rule 6-A cannot be brought on record as of right but shall

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

be governed by the discretion vesting in the Court, either under O.6 Rule 17 of the C.P.C. if sought to be introduced by way of amendment, or, subject to exercise of discretion conferred on the Court under O.8, Rule 9 of the C.P.C. if sought to be placed on record by way of subsequent pleading.

7. The purpose of the provision enabling filing of a counter-claim is to avoid multiplicity of judicial proceedings and save upon the Court's time as also to exclude the inconvenience to the parties by enabling claims and counter-claims, that is, all disputes between the same parties being decided in the course of the same proceedings. Order 8 Rule 9 CPC says that no pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same. The said Rule 9 of Order 8 CPC does not confer any right and it is only when the Court, in the facts and circumstance of the case is of the opinion that pleadings subsequent to the written statement is necessary in order to effectually determine the controversy before it, that it may require the defendant to file such additional pleadings namely additional written statement or counter-claim. This rule gives discretion to the Court to allow the defendant to file additional pleadings, set-off or counter-claim. Even in the absence of any claim or set-off or counter-claim, if the Court is satisfied of the relevancy of subsequent pleadings, it can grant leave to raise subsequent pleadings. Granting such leave to file additional pleadings by the defendant to bring additional facts on record would not mean that the Court will always accept them as true. It merely gives the defendant an opportunity to prove his case and bring the truth to light.

8. The petitioner in his written statement took the plea that the agreement of sale dated 19.09.1992 is a fabricated one and in the earlier suit filed by the respondent in O.S. No. 372 of 2002, an expert was appointed, who stated to have given a report that the said agreement is fabricated, hence, the respondent allegedly not prosecuted the said suit in O.S. No. 372 of 2002 as he felt that there is every possibility of losing it and adverse finding could be made against the sale agreement and subsequently filed the present suit in the year 2005, hence, leave was sought for to file counter-claim.

9. In the judgment of the Honourable Supreme Court reported in (Ramesh Chand Ardawatiya vs. Anil Panjwani) 2003 (3) MLJ 26 (SC), which was relied on by the trial court for dismissing I.A. No. 119 of 2006 filed by the petitioner, the defendant therein has not filed his written statement, hence, it was rejected by the trial court. Indeed, their Lordships in Para-28 of the said judgment held that 'certainly a counter-claim is not entertainable when there is no written statement on record. There being no written statement filed in the suit, the counter-claim was obviously not set up in the written statement within

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the meaning of Rule 6-A. There is no question of such counter-claim being introduced by way of amendment; for there is no written statement available to include a counter claim therein. Equally there would be no question of a counter-claim being raised by way of subsequent pleading as there is no previous pleading on record. In the present case, the defendant having failed to file any written statement and also having forfeited his right of filing the same, the trial court was fully justified in not entertaining the counter-claim filed by the defendant-appellant.'

10. Whereas, in this case, as mentioned above, written statement was filed in which the petitioner has taken a plea that the sale agreement is fabricated one, possession of the suit property was not at all delivered by the petitioner but possession was illegally taken by the respondent from the petitioner's tenants. Hence, the decision of the Honourable Supreme Court reported in (Ramesh Chand Ardawatiya vs. Anil Panjwani) 2003 (3) MLJ 26 (SC) cannot be made applicable to the facts and circumstance of the case on hand.

11. The other reason assigned by the court below for dismissing I.A. No. 119 of 2006 is the same is filed belatedly. While considering additional pleadings by the defendant, the court cannot go into the merits of the case but in this case the court below had gone into the same, which shall not be entertained. The courts are expected to be liberal in granting leave, but on such terms as it thinks fit in the circumstance of the case. A joint reading of Rules 6A and 9 of Order 8 CPC makes it clear that the Court may at any time allow the additional pleadings of the defendant. It is the duty of the court to consider only whether the said pleadings of the defendant is necessary for determining the real question in controversy between the parties and such application seeking leave to file additional pleadings can be allowed without causing injustice to the other side. In this case, the trial court has failed to consider the above said factors, hence, the reasons assigned by the trial court that the application is filed belatedly in so far as this case on hand is concerned is untenable. When we look into the case in different angle, the petitioner seeks for recovery of possession in case the suit was dismissed. For that, it is not necessary for him to go for a fresh suit because in this suit, both parties can adduce evidence, based on the said evidence, the claim of both the parties can be decided by the trial court, such approach would avoid multiplicity of proceedings.

12. Hence, in order to render justice to the parties, this Court is of the view that it is absolutely necessary to grant leave to the petitioner to file counter-claim as sought for. Moreover, as mentioned above, granting leave to file additional pleadings by the defendant to bring additional facts on record would not mean that the Court will always accept them as true. It merely gives the defendant an opportunity to prove his case and to bring the truth to light.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

13. In view of the above discussion, the Order dated 14.09.2006 passed by the court below in I.A. No. 119 of 2006 in O.S. No. 2 of 2005 is set aside. The revision petition is allowed as prayed for. No costs. It is needless to mention that the respondent is at liberty to file his reply to the counter-claim of the petitioner and if necessary, the trial court can also re-cast the issues and trial can be conducted accordingly. Consequently, connected miscellaneous petition is closed.

rsh

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Principal Subordinate Judge
Sub Court, Cuddalore
+ One cc to Mr. R. Sunilkumar, Advocate SR 71063
+ One cc to Mr. K.A. Ravindran, Advocate 70477

KM (co)
sg 05/12/07

CRP PD No. 1654 of 2006
28.11.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/